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EXAMINER

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3627

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/648,581
Filing Date: August 25, 2000
Appellant(s): BIRCH ET AL.

Tracy S. Powell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 7, 2005.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-29 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,331,546	Webber et al.	5-1994
5,948,040	DeLorme et al.	9-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Webber (U.S. Patent No. 5,331,546). This rejection is set forth in a prior Office Action, mailed on October 1, 2004.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webber (U.S. Patent No. 5,331,546). This rejection is set forth in a prior Office Action, mailed on October 1, 2004.

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Claims 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber (U.S. Patent No. 5,331,546) in view of DeLorme et al. (U.S. Patent No. 5,948,040). This rejection is set forth in a prior Office Action, mailed on October 1, 2004.

(11) *Response to Argument*

The Examiner notes that Claim 1 has multiple alternatives couched in "if/then" phraseology. The Examiner notes that Courts have held "When a claim covers several structures or composites, either generically or as alternatives, the claim is deemed anticipated if any of the structures or composition within the scope of the claim is known in the prior art" *Brown v. 3M*, 60 USPQ2d 1375 (Fed Cir. 2001) (Non-office Action, October 1, 2004: page 3, fifth indent). Moreover, by reciting the invention in the alternative, Appellants have presented a claim which can be infringed whether or not the alternative steps are performed. The principle of law is concisely embodied in the truism that: "That which infringes if later anticipates if earlier". *Polaroid Corp. v. Eastman Kodak Co.*, 229 USPQ 561 (Fed. Cir. 1986).

Claim 1 positively recites matching an offer for a product received from a customer with a preferred provider selected from a group of preferred providers.

The claim additionally recites certain other steps which may be conducted under certain, alternative conditions. Under such alternative conditions, claim 1 proceeds with steps which may be performed in the event that a quote from the selected preferred

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provider does not satisfy the offer. Iterations through the group of preferred providers may be conducted in this event, with iterations repeating for each preferred provider of the group of preferred providers until the offer is satisfied or until the group of preferred providers is exhausted. Iterations through a group of non-preferred providers may be conducted in the event that the offer is not satisfied. Iterations through this group repeat until the offer is satisfied or until the group of non-preferred providers is exhausted.

The prior art (Webber) teaches fulfilling the customer's travel policy by finding best preference itinerary (preferred provider) and books the selected itinerary. The itinerary includes the airline provider, fare and flight information. Thus, the Webber disclosure of fulfilling the customer's travel policy by finding the best preference itinerary and booking the itinerary anticipates the claimed invention.

Since, the positive recitations of claim 1 have been anticipated by Webber, it is not necessary that Webber otherwise anticipate the alternatives recited in the balance of the claim. Nonetheless, the Examiner notes that Webber discloses each and every alternative limitation set forth in the claims.

Issue 1: Whether the Claims 1-22 are Anticipated by Webber

Claims 1-5 and 7-11

Claim 1

Appellants argue that "Webber fails to disclose two groups of providers for satisfying a customer's offer: A preferred provider and a non-preferred provider group" (Appeal Brief, page 18).

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The Examiner notes that Webber discloses an entry of a travel request specifying travel parameters for a customer (customer offer) (col. 7, lines 12-15). A flight search request procedure (Figure 4) is carried out to find all of the itineraries, which could be used to satisfy the trip request being processed, and ranking these candidate itineraries in terms of non-preference factors and to rank them in terms of personal preference factors (col. 7, lines 53-64). The output of this flight search procedure is a set of itineraries which have survived so far as candidates for this trip request, which is ranked and can be processed in accordance with the procedure of fare searching, in order to find a valid fare candidate itineraries which the travel arranger can select one for this trip request (col. 7, line 64 – col. 8, line 2). Webber also discloses the process of calculating a “non-preference” rank for each itineraries (Figure 4D, ref. no. 142) and a “preference” rank for each itineraries (Figure 4E, ref. no. 144). The non-preference ranking addresses generally desirable or undesirable aspects of travel while the preference ranking addresses the particular preferences of the traveler (col. 10, line 67- col. 11, line 2). The itineraries include the airline provider, airline information and fare (col. 19, lines 37-43).

Such “preference” ranking of itineraries and “non-preference” ranking of itineraries are considered a preferred provider group and a non-preferred provider group.

Appellants argue that “Webber fails to disclose selecting a preferred provider from a group of preferred providers” (Appeal Brief, page19).

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The Examiner notes that Webber discloses the process which searches for the best itineraries which have remained as candidates for the particular flight request (col. 14, lines 27-29). The product of the process is a selected small set of candidate itineraries from which the travel arranger can select one to be actually ticketed (col. 14, lines 29-32).

Such selecting one from a small set of best candidate itineraries is considered the selecting a preferred provider from a group of preferred providers.

Appellants argue that "Webber fails to disclose obtaining at least one quote from the selected preferred provider" (Appeal Brief, page 19).

The Examiner notes that Webber discloses the process which searches for the best itineraries which have remained as candidates for the particular flight request after the process of fare searching (col. 14, lines 27-29). The process of fare searching is used to find the best valid fare for each of the candidate itineraries, so that this information can be used in finding the best flight itineraries from which the travel arranger can select the one to be used for this trip request (col. 11, lines 27-33).

Such fare searching so that the information can be used in finding the best flight itineraries from which the travel arranger can select one is considered "obtaining at least one quote from the selected preferred provider".

Appellants argue that "Webber fails to disclose evaluating the one at least one quote from the selected provider to determine if the quote satisfies the offer" (Appeal Brief, page 20).

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The Examiner notes that Webber discloses the process which searches for the best itineraries which have remained as candidates for the particular flight request after the process of fare searching (col. 14, lines 27-29). The product of this process is a selected small set of candidate itineraries from which the travel arranger can select one to be actually ticketed based on the travel request (col. 14, lines 29-32). The best preference itineraries are presented to the travel arranger, so that the travel arranger can decide if the cost is attractive enough to justify changing the trip request (col. 15, lines 30-33). A process is done for finding a cost attractive itinerary for a trip request, for example so that it could be compared with a trip using separate outbound and inbound fares or so that the round trip fare could be used, in case, the traveler would accept the restrictions that may be attached to such a fare (col. 15, lines 38-44).

Such presenting the best preference itineraries to the travel arranger, and deciding and comparing if the cost is attractive enough to justify changing the trip request are considered "evaluating the one at least one quote from the selected provider to determine if the quote satisfies the offer".

Appellants argue that "Webber fails to disclose repeatedly selecting another preferred provider and attempting to satisfy the offer from the newly selected preferred provider if the first selected preferred provider fails to satisfy the offer" (Appeal Brief, page 20).

The Examiner notes that Webber discloses a process which searches for the best itineraries which have remained as candidates for a particular flight request (col. 14, lines 27-29, Figure 6). The product of this process is a selected small set of

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candidate itineraries from which the travel arranger can select one to be actually ticketed (col. 14, lines 29-32). The process of finding the best flight search (best itineraries) (Figure 6) starts with the first of the candidate itineraries remaining after the flight search (Figure 4) and at step 224 checks if the penalty adjusted fare for this itinerary is higher than the maximum fare allowed for this flight request (Figure 6). If it is not (i.e. if the fare now being considered is still a good fare), step 226 checks if the itinerary is within the time window set for this trip (Figure 6), and if it is step 228 checks if this itinerary is either the best preference itinerary or best non-preference itinerary (col. 14, lines 37-49. If it is the best preference itinerary, it is saved in step 234 and if it is the best non-preference itinerary, it is saved in step 228 (col. 14, lines 43-47). The process continues until a best preference itinerary is found (Figure 6). If this itinerary does not satisfy the traveler, the process returns to step 224 and starts with the next candidate itineraries to be processed similarly (Figure 6). Once the process goes through all candidate itineraries, the process selects the best preference itinerary which is saved in step 238 (col. 14, line 65 – col. 15, line 1). The process checks each candidate itinerary until the best preference rank itinerary is found (col. 15, lines 11-16).

Such process of checking each candidate itinerary until the best preference rank itinerary is found is considered "repeatedly selecting another preferred provider and attempting to satisfy the offer from the newly selected preferred provider if the first selected preferred provider fails to satisfy the offer".

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Appellants argue that “Webber fails to disclose attempting to satisfy the offer from the group of non-preferred provider when the group of preferred providers is exhausted” (Appeal Brief, page 21).

The Examiner notes that Webber discloses a process which searches for the best itineraries which have remained as candidates for a particular flight request (col. 14, lines 27-29, Figure 6). The product of this process is a selected small set of candidate itineraries from which the travel arranger can select one to be actually ticketed (col. 14, lines 29-32). The process begins by starting with the first candidate remaining after the flight search (Figure 4) and checks if this itinerary is a best preference or a best non-preference rank itinerary (col. 14, lines 32-51). Once the test shows all candidate itineraries have been processed and the process does not find any best preference rank itineraries, the processor then selects the best non-preference itinerary. (col. 14, line 64 – col. 15, line 5).

Such finding the best flight search by processing each candidate itinerary, showing all candidate itineraries being processed, wherein the process does not find the best preference rank itinerary and selects a non-preference rank itinerary are considered attempting to satisfy the offer from the group of non-preferred provider when the group of preferred providers is exhausted.

Appellants argue that “as Webber fails to disclose each element of claim 1, the 35 U.S.C. 102(b) rejection was improper” (Appeal Brief, page 21).

The Examiner notes that each and every limitation was found expressly or inherently in Webber, as addressed above and in the Office Action dated October 1, 2004.

Claims 2-5 and 7-11

The Appellants present arguments (Appeal Brief, page 22) that rely on the arguments of claim 1, which is addressed above.

Claim 6

The Appellants present arguments (Appeal Brief, page 22) that relies on the arguments of claim 1, which is addressed above.

Furthermore, Appellants assert that claim 6 includes additional recitations that further distinguish it from Webber, thus claim 6 is separately patentable and stands alone. Appellants argue that Webber fails to disclose "evaluating the quotes provided by the selected preferred provider in descending order of value, from the highest quote to the lowest quote, and selecting the highest quote that satisfies the offer" (Appeal Brief, pages 22-23).

The Examiner notes that Webber discloses the process which searches for the best itineraries which have remained as candidates for the particular flight request after the process of fare searching (col. 14, lines 27-29). The process of fare searching is used to find the best valid fare for each of the candidate itineraries, so that this information can be used in finding the best flight itineraries from which the travel arranger can select the one to be used for this trip request (col. 11, lines 27-33). Figure 5a-5d is a flow chart illustrating a fare search process. The chart starts with the first

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flight request (148) and checks to see if the process produced any connecting flight itineraries or not (direct flights) (150) (col. 11, lines 41-45). Then in step 188, the processor gets all the fares for all the routes from the origin to the destination of the flight request being processed (col. 12, lines 52-57). At step 190, the processor starts with the lowest of the through fare found and set a variable "highest allowed fare" to a high value (col. 12, lines 57-60). At step 192, processor checks if the current fare under consideration higher than the highest allowed fare. If so jumps to step 220 (best flight search, Figure 6a) to find the best itineraries (col. 12, lines 61-64).

Such fare searching process and checking if the current fare is higher than the highest allowed fare, in order to find the best itineraries is considered "evaluating the quotes provided by the selected preferred provider in descending order of value, from the highest quote to the lowest quote, and selecting the highest quote that satisfies the offer".

Claims 12-15 and 18-25

Appellants argue that "Webber fails to disclose ranking preferred providers" (Appeal Brief, page 24).

The Examiner notes Webber discloses the ranking preferred providers. Webber discloses a flight search request procedure (Figure 4), which is carried out to find all of the itineraries, which could be used to satisfy the trip request being processed, and ranking these candidate itineraries in terms of personal preference factors (col. 7, lines 53-64). The output of this flight search procedure is a set of itineraries which have survived so far as candidates for this trip request, which is ranked and can be

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processed in accordance with the procedure of fare searching, in order to find a valid fare candidate itineraries which the travel arranger can select one for this trip request (col. 7, line 64 – col. 8, line 2). Furthermore, Webber discloses the process of calculating a “preference” rank for each itinerary (Figure 4E, ref. no. 144).

Such ranking the candidate itineraries in terms of personal preference factors and calculating a “preference” rank for each itinerary are considered ranking preferred providers.

Appellants argue that “Webber fails to disclose selecting the highest ranked preferred providers” (Appeal Brief, page 24).

The Examiner notes Webber discloses selecting the highest ranked preferred providers. Webber discloses a flight search request procedure (Figure 4), which is carried out to find all of the itineraries, which could be used to satisfy the trip request being processed, and ranking these candidate itineraries in terms of personal preference factors (col. 7, lines 53-64). The output of this flight search procedure is a set of itineraries which have survived so far as candidates for this trip request, which is ranked and can be processed in accordance with the procedure of fare searching, in order to find a valid fare candidate itineraries which the travel arranger can select one for this trip request (col. 7, line 64 – col. 8, line 2). Furthermore, Webber discloses the process of calculating a “preference” rank for each itinerary (Figure 4E, ref. no. 144). The preference ranking addresses the particular preferences of the traveler being serviced (col. 11, lines 1-2). Moreover, Webber discloses searching for the best itineraries (col. 14, lines 27-29).

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Such ranking the candidate itineraries in terms of personal preference factors, calculating a "preference" rank for each itinerary, and searching the best itineraries are considered selecting the highest ranked preferred providers.

Appellants argue that "Webber fails to disclose attempting to match the offer from the customer with the highest ranked preferred provider by determining whether a quote obtained from the highest ranked preferred provider satisfied the preferred criteria associated with the highest ranked preferred provider" (Appeal Brief, page 25).

The Examiner notes that Webber discloses an entry of a travel request specifying travel parameters for a customer (customer offer) (col. 7, lines 12-15). A flight search request procedure (Figure 4) is carried out to find all of the itineraries, which could be used to satisfy the trip request being processed, and ranking these candidate itineraries in terms of personal preference factors (col. 7, lines 53-64). The output of this flight search procedure is a set of itineraries which have survived so far as candidates for this trip request, which is ranked and can be processed in accordance with the procedure of fare searching, in order to find a valid fare candidate itineraries which the travel arranger can select one for this trip request (col. 7, line 64 – col. 8, line 2). Webber also discloses the process of calculating a "preference" rank for each itinerary (Figure 4E, ref. no. 144). The preference ranking addresses the particular preferences of the traveler (col. 10, line 67-col. 11, line 2). Furthermore, the best preference itineraries are presented, so that a decision can be made to decide whether the cost is attractive enough to justify changing the trip request (col. 15, lines 30-33). A process is done for finding a cost attractive itinerary for a trip request, for example so that it could be

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compared with a trip using separate outbound and inbound fares or so that the round trip fare could be used, in case, the traveler would accept the restrictions that may be attached to such a fare (col. 15, lines 38-44).

Such providing the best itineraries based on the travel request, deciding and comparing if the cost (fare) is attractive are considered attempting to match the offer from the customer with the highest ranked preferred provider by determining whether a quote obtained from the highest ranked preferred provider satisfied the preferred criteria associated with the highest ranked preferred provider.

Claims 13-15 and 18-22

The Appellants present arguments (Appeal Brief, pages 25-26) that relies on the arguments of claim 12, which is addressed above.

Claim 15

Appellants argue that Webber fails to disclose “wherein attempting to match the offer with other preferred providers is performed in descending order of the ranking associated with each preferred provider” (Appeal Brief, page 26).

The Examiner notes that Webber discloses an entry of a travel request specifying travel parameters for a customer (customer offer) (col. 7, lines 12-15). A flight search request procedure (Figure 4) is carried out to find all of the itineraries, which could be used to satisfy the trip request being processed, and ranking these candidate itineraries in terms of personal preference factors (col. 7, lines 53-64). The output of this flight search procedure is a set of itineraries which have survived so far as candidates for this trip request, which is ranked and can be processed in accordance with the procedure of

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fare searching, in order to find a valid fare candidate itineraries which the travel arranger can select one for this trip request (col. 7, line 64 – col. 8, line 2). Webber also discloses the process of calculating a “preference” rank for each itinerary (Figure 4E, ref. no. 144). The preference ranking addresses the particular preferences of the traveler (col. 10, line 67-col. 11, line 2). Once the preference itineraries are found, the processor sorts the selected itineraries by departure time and displays these itineraries together with the best fares (col. 15, lines 14-16).

Such entry to travel request, searching to find all of the itineraries which could be used to satisfy the search request, ranking the itineraries, calculating the best preference rank itineraries, and sorting the itineraries are considered attempting to match the offer with other preferred providers is performed in descending order of the ranking associated with each preferred provider.

Claims 16-17

The Appellants present arguments (Appeal Brief, pages 26-27) that rely on the arguments of claims 1 and 12, which is addressed above.

Issue 2: Whether Claim 23 is Obvious in View of Webber

Claim 23

The Appellants present arguments (Appeal Brief, page 27) rely on the arguments of claim 12, which is addressed above.

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Appellants argue that the Office Action (Non-final Office Action, October 1, 2004, Pages 7-8) dismisses the positive recitation "wherein the preferred criteria comprises a round robin decision process"....Therefore,the Office Action failed to make a proper *prima facie* case of obviousness" (Appeal Brief, pages 27-28).

The Examiner notes that each limitations of a claim must be treated in the combination and relationships recited in order to make a *prima facie* case, but part of this treatment may be determination that particular language does not limit the claim. No claims limitations have been ignored. The claim has been considered as a whole, and as analyzed in the last Office Action (Non-final Office Action, October 1, 2004, pages 7-8). The descriptive material does not further limit the executed instructions in the computer-readable medium of claim 12. The executed instructions would be performed regardless of the descriptive material.

Issue 3: Whether claims 24-29 are obvious in view of Webber and Delorme

Claims 24-27

Claim 24

Appellants argue that the cited references fail to disclose the "at least two groups: a preferred providers groups and a non-preferred providers group, each preferred provider having a distinct preference ranking" (Appeal Brief, page 29).

The Examiner notes that Webber discloses an entry of a travel request specifying travel parameters for a customer (customer offer) (col. 7, lines 12-15). A flight search request procedure (Figure 4) is carried out to find all of the itineraries, which could be

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used to satisfy the trip request being processed, and ranking these candidate itineraries in terms of non-preference factors and to rank them in terms of personal preference factors (col. 7, lines 53-64). The output of this flight search procedure is a set of itineraries which have survived so far as candidates for this trip request, which is ranked and can be processed in accordance with the procedure of fare searching, in order to find a valid fare candidate itineraries which the travel arranger can select one for this trip request (col. 7, line 64 – col. 8, line 2). Webber also discloses the process of calculating a “non-preference” rank for each itineraries (Figure 4D, ref. no. 142) and a “preference” rank for each itineraries (Figure 4E, ref. no. 144). The non-preference ranking addresses generally desirable or undesirable aspects of travel while the preference ranking addresses the particular preferences of the traveler (col. 10, line 67- col. 11, line 2). The itineraries include the airline provider, airline information and fare (col. 19, lines 37-43). The Examiner then turns to Delorme to teach the web server.

Such “preference” ranking of itineraries and “non-preference” ranking of itineraries are considered a preferred provider group and a non-preferred provider group.

Appellants argue that the cited references fail to disclose “match the offer with each preferred provider in the preferred providers groups in descending order of preference” (Appeal Brief, pages 29-30).

The Examiner notes that Webber discloses an entry of a travel request specifying travel parameters for a customer (customer offer) (col. 7, lines 12-15). A flight search request procedure (Figure 4) is carried out to find all of the itineraries, which could be

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used to satisfy the trip request being processed, and ranking these candidate itineraries in terms of personal preference factors (col. 7, lines 53-64). The output of this flight search procedure is a set of itineraries which have survived so far as candidates for this trip request, which is ranked and can be processed in accordance with the procedure of fare searching, in order to find a valid fare candidate itineraries which the travel arranger can select one for this trip request (col. 7, line 64 – col. 8, line 2). Webber also discloses the process of calculating a “preference” rank for each itinerary (Figure 4E, ref. no. 144). The preference ranking addresses the particular preferences of the traveler (col. 10, line 67-col. 11, line 2). Once the preference itineraries are found, the processor sorts the selected itineraries by departure time and displays these itineraries together with the best fares (col. 15, lines 14-16). The Examiner then turns to Delorme to teach the web server.

Such entry to travel request, searching to find all of the itineraries which could be used to satisfy the search request, ranking the itineraries, calculating the best preference rank itineraries, and sorting the itineraries are considered attempting to match the offer with other preferred providers is performed in descending order of the ranking associated with each preferred provider.

Appellants argue that the combined references (Webber and DeLorme) alone and in combination, fail to teach or suggest each element of claims 24. Therefore, the Office Action (Non-final Office Action, October 1, 2004) failed to make a proper *prima facie* case of obviousness (Appeal Brief, page 30).

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The Examiner notes that Webber was cited for a computer system for matching offers with quotes comprising: an online travel service exchanger which included a travel server component, and the online travel service exchanger (Non-final Office Action, October 1, 2004: page 8, second indent). Webber does not disclose the web server. However, Webber does disclose communicating with a processor through a communication link or each or which can be a direct cable or some other hardwired connection or can be a device such as a modem operating under suitable communication software to connect the entry device to processor through the telephone network or through some other communication link (col. 14, lines 43-47). The Examiner then turns to Delorme to teach the web server (Non-final Office Action, October 1, 2004: page 9, first bridging). DeLorme teaches a Trips Internet World Wide Web site (col. 14, lines 46-47). The Examiner then provides a statement of motivation to combine the teachings of Webber and Delorme (Non-final Office Action, October 1, 2004: page 9, first indent).

Claims 25-29

The Appellants present arguments (Appeal Brief, page 30) that relied on the arguments of claim 24, which is addressed above.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

mtot
May 16, 2005

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